IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6930 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAKSHABEN VASANTLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR PC KAVINA for Petitioner

MR L.R.PUJARI, AGP FOR STATE AUTHORITIES

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 25/02/2000

ORAL JUDGEMENT

This petition is filed against the order passed by the Additional Chief Secretary (Appeals) (Revenue Department) , Ahmedabad, at Annexure `A' to the petition, dated August 31, 1987.

Short facts leading to the present petition are that it was the case of the petitioner that in pursuance of the application made by her, certain land was granted to her by the Collector, Sabarkantha , Himatnagar vide order dated June 10, 1986 at Annexure `B' to the petition, bearing City Survey No. 4319 , admeasuring 27.87.70 sq.mrts. on certain terms and conditions. It appears that being aggrieved by the said order, one Umarbhai Yakubbhai filed an appeal before the Additional Chief Secretary (Appeals) . Said appeal came up for hearing before the authority . It was stated that the petitioner in whose favour the land was granted was neither joined as a party-respondent nor notice was issued nor an opportunity of hearing afforded to her. The Addl. Chief Secretary (Appeals), by the order impugned in the present petition, quashed and set aside the order passed by the Collector. It is this order which is impugned in the present petition.

When the matter was placed for admission, Rule was issued and interim relief in terms of para 24 (b) was granted. Para 24 (b) reads as under :

"24. The petitioner, therefore, prays that this Honourable court may be pleased :

(a) x x x x

(b) To restrain, pending the hearing and final disposal of this petition, the respondents from implementing the impugned order dated 31.8.1998 (Annexure `A' hereto) made by respondent No.2 herein in the proceedings bearing No. SRD (Land) 774/86 against the order dated 10.6.1986 (Annexure `B' hereto) of the Collector, Sabarkantha District at Himatnagar.

(c) x x x

(d) x x x

(e) x x x ".

The matter is called out for final hearing today.

I have heard Mr. Kavina ,learned advocate for the petitioner and Mr. Pujari, learned AGP on behalf of respondents Nos. 1 and 2. Though served, respondents Nos. 3 and 4 do not appear.

Mr. Kavina for the petitioner mainly contended that though the land was granted by the Collector in June, 1986 to the petitioner, the said order was set aside by the Secretary (Appeals) before issuing any notice calling for explanation or hearing the petitioner. He submitted that it was obligatory on the part of the applicant before Addl. Chief Secretary (Appeals) to join the present petitioner as party inasmuch as the land was granted in her favour and she was the only party which was affected by the order which was passed . The applicant committed an illegality in not joining the present petitioner as party ,but the same mistake and error of law was committed by the Addl. Chief Secretary (Appeals) also inasmuch as no notice was served, no explanation was sought and without observing principles of natural justice, the order granting land in favour of the petitioner by the Collector in 1986 came to be set aside by the authority in 1987. It is only that ground that, according to the learned advocate, the order passed by the Addl. Chief Secretary deserves to be set aside.

Mr. Pujari, on the other hand, stated that it is no doubt true that the present petitioner was not a party-respondent before the Addl. Chief Secretary and no notice was issued and no hearing was afforded to her. But the Addl. Chief Secretary has stated that the land was on road-side and it could not have been granted in her favour. He, therefore, submitted that the order need not be set aside in exercise of powers under Article 226/ 227 of the Constitution of India.

In the facts and circumstances of the case, in my opinion, the order passed by the Addl. Chief Secretary deserves to be set aside only on one ground of non-observance of principles of natural justice. It is an admitted fact that the order granting land was passed in favour of the petitioner by the Collector in June, 1986. Though the said order was challenged before the Addl.Chief Secretary , the petitioner was not made a party nor notice was issued nor opportunity of hearing was afforded to her. The order undoubtedly adversely affected the petitioner since by the impugned order, grant of land made in favour of the petitioner was vacated by the Addl. Chief Secretary. In these circumstances, in my opinion, the order passed by the said authority deserves to be quashed and set aside and is hereby set aside. Rule is made absolute. In the facts and circumstances of the case, there shall be no order as to costs. It is, however, open to the respondent authorities to take appropriate proceedings in

accordance with law if they are so advised, after affording an opportunity of hearing to the petitioner. It is also open to the authorities to issue notice to Umarbhai Yakubbhai in case the authorities intend to reopen the case.

-

parekh